

SZAFERMAN, LAKIND,
 BLUMSTEIN & BLADER, P.C.
 101 Grovers Mill Road, Suite 200
 Lawrenceville, New Jersey 08648
 By: Robert E. Lytle, Esq. (ID # 046331990)
 Telephone: (609) 275-0400
 Fax: (609) 275-4511
 RLytile@szaferman.com
 Attorneys for Plaintiff

JOSEPH ASCOLESE) SUPERIOR COURT OF NEW JERSEY
) LAW DIVISION: HUDSON COUNTY
)
Plaintiff,) Docket No.
)
vs.)
)
CITY OF JERSEY CITY; CITY OF) Civil Action
JERSEY CITY COUNCIL; CITY OF)
JERSEY CITY BUSINESS)
ADMINISTRATOR, MARK BUNBURY, (in)
his official capacity), CHIEF OF)
POLICE MICHAEL KELLY (in his)
official capacity); MAYOR STEVEN)
M. FULOP, (in his official) COMPLAINT IN LIEU OF
capacity)) PREROGATIVE WRIT
)
Defendants.)
)

The plaintiff, Joseph Ascolese ("Ascolese" or "Plaintiff"), by way of complaint against the defendants, says:

THE PARTIES

1. The plaintiff was employed as a police officer with the City of Jersey City Police Department ("Police Department") and held the rank of Captain.

2. The City of Jersey City ("City") is located at 280 Grove Street, Jersey City, New Jersey.

3. The City of Jersey City Council ("Council") is the governing legislative body for the City under the Faulkner Act. The Council's business office is located at 280 Grove Street, Jersey City, New Jersey.

4. Mark Bunbury is the Business Administrator for the City of Jersey City ("Business Administrator") with offices at 280 Grove Street, Jersey City, New Jersey.

5. Chief of Police Michael Kelly ("Chief") is the Police Chief of the Police Department with offices at One Journal Square Plaza, Jersey City, New Jersey.

6. Mayor Steven M. Fulop ("Mayor") is the Mayor of the City of Jersey City with offices at 280 Grove Street, Jersey City, New Jersey.

JURISDICTION AND VENUE

7. This Court has jurisdiction to review the defendant municipality's decision with respect to the police-related employment matters by virtue of Rule 4:69-1; and N.J.S.A. 40A:14-147 et seq.

8. The Police Department is located within Hudson County and all relevant acts occurred in Hudson County in violation of New Jersey statutes, New Jersey common law, and/or the Constitution of the State of New Jersey.

FACTS

9. On February 1, 2015, Ascolese retired from the Jersey City Police Department and began receiving his pension shortly thereafter.

10. On June 14, 2016 Indictment No. 16-06-0838 was filed against Ascolese who at that time was a Captain with the City of Jersey City Police Department. Three other individuals were charged; Lieutenant Kelly Chesler, P.O. Michael O'Neill and P.O. Michael Maietti.

11. The indictment consisted of 107 counts as to all of the officers. Specifically, Plaintiff Ascolese was charged with thirty-seven counts consisting of Conspiracy to Commit Theft by Deception; Theft by Deception; Falsifying Records; Official Misconduct; and Pattern of Official Misconduct. Numerous counts were dismissed by the State prior to trial and the remainder of the counts were dismissed during trial by the State's own motion. [Exhibit A].

12. On June 20, 2016 a letter was sent to Robert Kakoleski City Administrator for the City pursuant to N.J.S.A. 40A:14-155 demanding that the City provide the means for Ascolese's defense to the indictment. [Exhibit B]. On June 27, 2016, Assistant Corporation Counsel for the City, Megan L. Morey, Esq., responded denying the request for means for a defense. [Exhibit C].

13. On June 12, 2017, the Board of Trustees of the Police and Fireman's Retirement System suspended Ascolese's pension benefits as a result of the indictment. Ascolese's pension benefits remain suspended.

14. On September 5, 2018 a trial of the criminal charges against Ascolese commenced before the Honorable Mirtha Ospina, J.S.C. On October 23, 2018 Indictment No. 16-06-0838 was dismissed as a result the State's motion to dismiss all charges based on its admitted failure to be able to prove any criminal wrongdoing on the part of Ascolese. [Exhibit A].

15. A further request was made for reimbursement of attorney's fees and costs in connection with defense of the criminal action by letter dated October 25, 2018 to the City Clerk, Robert Byrne. [Exhibit D].

16. By letter dated November 7, 2018 to Assistant Corporation Counsel, Scott W. Carbone, Esq., Plaintiff's attorney did not object to the City's request for more time to review the matter. As of the filing of this Complaint, the City has refused and/or failed to reimburse Ascolese for legal fees and costs in defense of the criminal matter or the departmental disciplinary proceeding. [Exhibit E].

COUNT ONE

17. Plaintiff repeats and reiterates the allegations contained in paragraphs 1 to 16 as though fully set forth herein.

18. N.J.S.A. 40A:14-155 provides:

Whenever a member or officer of a municipal police department or force is a defendant in any action or legal proceeding arising out of and directly related to the lawful exercise of police powers in the furtherance of his official duties, the governing body of the municipality shall provide said member or officer with necessary means for the defense of such action or proceeding, but not for his defense in a disciplinary proceeding instituted against him by the municipality or in criminal proceeding instituted as a result of a complaint on behalf of the municipality. If any such disciplinary or criminal proceeding instituted by or on complaint of the municipality shall be dismissed or finally determined in favor of the member or officer, he shall be reimbursed for the expense of his defense.

19. At all times, plaintiff Ascolese's actions arose out of and were directly related to the lawful exercise of his police powers in the furtherance of his official duties.

20. By refusing to provide a means for his defense and subsequently refusing to reimburse Ascolese despite the dismissal of all criminal charges, the defendants are in willful violation of New Jersey law, injuring plaintiff.

WHEREFORE, Plaintiff, Joseph Ascolese, demands judgment against the Defendants as follows:

- (a) Reimbursing Ascolese for all attorney's fees and costs pursuant to N.J.S.A. 40A:14-155;
- (b) Reimbursing Ascolese for all pension benefits, and other damages;

(c) Such other relief as this Court deems just and equitable.

SZAFERMAN, LAKIND, BLUMSTEIN
& BLADER, P.C.
Attorneys for Plaintiff

BY: 

ROBERT E. LYTLE, ESQ.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R.4:25-4, Robert E. Lytle, Esq., is hereby designed as trial counsel in this matter.

CERTIFICATION PURSUANT TO R.4:5-1

I certify that the matter in controversy in the within action is not the subject of any other action or arbitration proceeding, pending or contemplated, in any court, and that there are no additional parties who should be joined in this action. R. 4:5-1. In addition, we recognize the continuing obligation of each party to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

SZAFERMAN, LAKIND, BLUMSTEIN
& BLADER, P.C.
Attorneys for Plaintiff

BY: 

ROBERT E. LYTLE, ESQ.

CERTIFICATION PURSUANT TO R.4:69-4

Pursuant to Rule 4:69-4, I hereby certify that to my knowledge there are no transcripts with respect to the underlying local agency decision.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

SZAFERMAN, LAKIND, BLUMSTEIN
& BLADER, P.C.
Attorneys for Plaintiff

BY:

ROBERT E. LYTLE, ESQ.

CERTIFICATION OF NO CONFIDENTIAL PERSONAL IDENTIFIERS

Confidential personal identifiers have been redacted from any documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

SZAFERMAN, LAKIND, BLUMSTEIN
& BLADER, P.C.
Attorneys for Plaintiff

BY:

ROBERT E. LYTLE, ESQ.

Dated: November ____, 2018

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STATE OF NEW JERSEY

Plaintiff,

Joseph Ascolese.

Defendant,

**SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION: HUDSON COUNTY****Case No.: 16-06-0838-I****JUDGEMENT OF ACQUITTAL**

THIS MATTER having been opened to the Court by Robert Lytle, Esq., attorney for the Defendant, Joseph Ascolese and in the presence of the State, represented by Assistant Prosecutor Peter Stoma, Esq., and the Court having considered and heard the arguments of counsel, and for good cause having been shown;

IT IS on this 17th day of October, 2018;

ORDERED, this defendant's motion to acquit, as to counts 1, 4, 94, 95, 96, and 97, and only these counts, is hereby **GRANTED** for reasons stated on the record on October 12, 2018.



MIRTHA OSPINA, J.S.C.

STATE OF NEW JERSEY	:	SUPERIOR COURT OF NEW JERSEY
	:	CRIMINAL DIVISION: HUDSON COUNTY
	:	
Plaintiff,	:	Case No.: 16-06-0838-I
	:	
	:	
Joseph Ascolese, et al.	:	ORDER DISMISSING WITH PREJUDICE
	:	
Defendant,	:	
	:	

THIS MATTER having been opened to the Court by Peter Stoma, Esq., representing the State, in the presence of the defendant Joseph Ascolese, represented by Robert Lytle, Esq., and for good cause having been shown;

IT IS on this 23rd day of October, 2018;

ORDERED, this defendant's remaining charges are dismissed with prejudice, for reasons stated on the record.


MIRTHA OSPINA, J.S.C.

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Christopher S. Myles
Christopher S. Kwelty

+Certified Matrimonial Attorney
++Certified Civil and Criminal Trial Attorney
*NJ & PA Bars
**NJ & NY Bars
***NJ, NY & PA Bars

June 20, 2016

Via Fax: 201-547-4833 & Regular Mail

OUR FILE NO. 79045.1

Mr. Robert J. Kaboleski, City Administrator
City of Jersey City
City Hall
280 Grove Street
Jersey City, NJ 07302

Re: Capt. Joseph Ascolese
Indictment No. 16-06-0838

Dear Mr. Kaboleski:

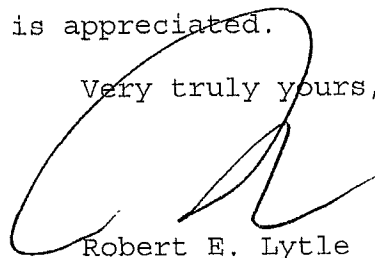
This firm has been retained to represent Capt. Joseph Ascolese (Ret.) of the City of Jersey City Police Department. Capt. Ascolese has been charged with various offenses in the above referenced indictment.

Please note that the allegations that give rise to these offenses stem from Capt. Ascolese's duties as a Jersey City Police Officer and were within the scope of his duties. Capt. Ascolese denies these allegations and will be exercising his constitutional right to trial.

Please accept this letter as notice pursuant to N.J.S.A. 40A:14-155 that Capt. Ascolese is seeking that the City of Jersey City provide him with the means for a defense in this matter. Please forward me any forms required to be filed regarding this request.

Your prompt response is appreciated.

Very truly yours,



Robert E. Lytle

REL/amd

c: Client

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STEVEN M. FULOP
MAYOR OF JERSEY CITY

CITY OF JERSEY CITY
DEPARTMENT OF LAW

CITY HALL • 280 GROVE STREET • JERSEY CITY, NJ 07302
PHONE (201) 547-5229 • FAX (201) 547-5230



JEREMY FARRELL
CORPORATION COUNSEL

JUL - 5 2016

June 27, 2016

Robert E. Lytle, Esq.
Szaferman, Lakind,
Blumstein & Blader, P.C.
101 Grovers Mill Road, Suite 200
Lawrenceville, N.J. 08648

Re: Capt. Joseph Ascolese
Indictment No. 16-06-0838

Dear Mr. Lytle:


The Office of the Corporation Counsel received your client's request in connection with the above referenced matter.

Please be advised that N.J.S.A. 40A:14-155 is only applicable in matters where the officer is a defendant in any action arising out of and directly related to the *lawful exercise of police powers* in furtherance of his official duties. As Capt. Ascolese has been charged with conspiracy, theft by deception in the 3rd and 4th degrees, falsifying records, official misconduct and patterns of official misconduct in the 2nd and 3rd degrees, he is not entitled to a means for the defense of such charges.

Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

JEREMY FARRELL
CORPORATION COUNSEL



MEGAN L. MOREY
Assistant Corporation Counsel

MLM/dc

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Huff, Moran & Orron, LLC
1246 South River Road
Cranbury, NJ 08512
Tel(609)655-3600

October 25, 2018

Via Regular Mail and Lawyers Service

Robert Byrne, Clerk
City of Jersey City
280 Grove Street
Jersey City, New Jersey 07302

Re: Captain Joseph Ascolese (Ret.)
Indictment #16-06-0838

Dear Mr. Byrne:

This firm represents Captain Joseph Ascolese, who is retired from the Jersey City Police Department.

This will confirm that all of the charges against Captain Ascolese contained Indictment No. 16-06-0838 have been resolved. After two weeks of trial, on October 17, 2018, The Honorable Mirtha Ospina, J.S.C., entered a Judgment of Acquittal in favor of Captain Ascolese as to Counts 1, 4, 94, 95, 96 and 97 of the Indictment. (Exhibit A). Thereafter, on October 23, 2018, Judge Ospina entered an Order granting the State's motion to dismiss with prejudice the remaining Counts of the Indictment against Captain Ascolese. (Exhibit B). Since all charges against my client have been dismissed, and pursuant to N.J.S.A. 40A:14-155, demand is hereby made that the City reimburse Captain Ascolese for all legal fees and costs associated with his defense. Please be advised that, if you do not respond to this letter within seven (7) days of the above date, an action will be commenced in the Superior Court of New Jersey against the appropriate parties seeking all remedies to which my client is entitled together with attorney's fees and costs of suit.

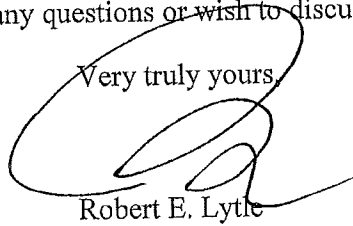
**SZAFERMAN
LAKIND**

*Ms. Robert Byrne
Clerk, City of Jersey City
October 25, 2018*

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Please contact me if you have any questions or wish to discuss the matter further.

Very truly yours,

A handwritten signature in black ink, appearing to be "Robert E. Lytle", written over the closing "Very truly yours,".

Robert E. Lytle

enc.

c: James Shea, Public Safety Director (Via Regular Mail and Lawyers Service)
Chief Michael Kelly (Via Regular Mail and Lawyers Service)
Peter Baker, Esq. (Via Regular Mail and Lawyers Service)
Client

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Tel(609)655-3600

November 7, 2018

Via Fax: 201-547-5230 & Regular Mail

Our File No.: 79045.1
Scott Carbone, Assistant Corporation Counsel
For the City of Jersey City
Department of Law
City Hall
280 Grove Street
Jersey City, New Jersey 07302

Re: Captain Joseph Ascolese (Ret.)
Indictment #16-06-0838

Dear Mr. Carbone:

This will acknowledge receipt of your letter dated October 31, 2018, which was written in response to my letter of October 25, 2018, demanding that the City reimburse Captain Ascolese for all legal fees and costs associated with his defense in the above-referenced matter pursuant to N.J.S.A. 40A:14-155. According to your letter, the City intends to provide a substantive response within the next few weeks and has requested that my client refrain from initiating any litigation until that time.

As you are likely aware, Captain Ascolese has been without his pension for a substantial amount of time because it was suspended as a result of what was demonstrated to be baseless criminal charges. My client and his family, therefore, have suffered serious financial and emotional hardship which continues to this day. Nevertheless, as a courtesy and a show of good faith that the City will make the prudent decision, we will agree not

**SZAFERMAN
LAKIND**

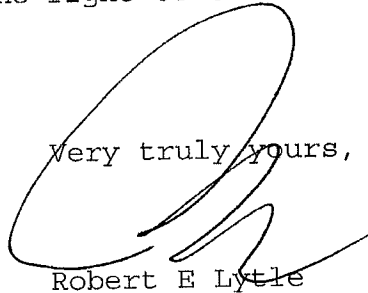
Scott Carbone, Asst. Corp. Counsel
November 7, 2018

Page 2

to institute litigation before November 16th, 2018. Should we not receive a substantive response from the City by that date, Captain Ascolese reserves the right to take the appropriate legal action.

Thank you.

Very truly yours,



Robert E Lytle

REL/amd

c: Peter J. Baker, Corporation Counsel
Jeffrey Garrigan, Esq.
Charles Sciarra, Esq.
Debra Dickerson, Sr. Liability Analyst/Claims Resolution Corp.
Client